In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1417

SANDRA LEE SHERWOOD AND DANA S. SHERWOOD,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners were convicted in the District Court of Colorado of selling L.S.D. in violation of 21 U.S.C. (Supp. V) 331(q)(2). Both were sentenced to imprisonment, petitioner Sandra Sherwood for four years, petitioner Dana Sherwood for five. The court of appeals affirmed the convictions.

Petitioners claim that their convictions should be set aside because the principal evidence against them consisted of testimony by co-defendants who pleaded guilty [1] but had not been sentenced at the time of trial

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[1] As noted in the petition (Pet. 8–9) a narcotics agent saw the co-defendants meet the petitioners, as the co-defendants testified.

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and who had previously signed a letter exonerating petitioners from implication in the crime.[2] All these facts, including the co-defendants' explanation about why they signed the letter, were brought before the jury. The jury was entitled to believe the co-defendants, whose testimony was corroborated by another witness in significant respects (see Pet. 8).[3] The fact that the co-defendants had not yet been sentenced was merely one factor the jury could consider in assessing their credibility. *United States* v. *Boswell,* 372 F.2d 781, 784 (C.A. 4), certiorari denied *sub nom. Hellams* v. *United States,* 387 U.S. 919.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1971.

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[2] The sentencing judge for the co-defendants was not the trial judge for petitioners. (Pet. App. 2.)

[3] Petitioners also argue that the district court committed plain error in failing to instruct that testimony of accomplices should be viewed with caution, even though there was no request for such instructions. Since the facts tending to impeach the witnesses in this simple case were fully developed, the failure of the court *sua sponte* to give such an instruction does not amount to plain error. The case of *Williamson* v. *United States*, 332 F.2d 123 (C.A. 5), on which petitioners rely, turns on its special facts. See *Caldwell* v. *United States*, 405 F.2d 613, 615 (C.A. 9), certiorari denied, 394 U.S. 1004.

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